

## **INFORMATION BULLETIN #12**

### **INCOME TAX**

**DECEMBER 2007**

**(Replaces Bulletin #12 dated January 2003)**

**DISCLAIMER:** Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information, which is not consistent with the law, regulations, or court decisions, is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

**SUBJECT:** Corporate Income Taxes

**REFERENCES:** IC 6-2.3; C 6-3-2; IC 6-3-3; IC 6-3-4; IC 6-3.1; IC 6-5.5-1-17;  
IC 27-1-18-2

#### **General Statement**

A corporation doing business or an entity subject to the utility receipts tax under IC 6-2.3 in Indiana, other than a corporation defined as a taxpayer under IC 6-5.5-1-17, is subject to the adjusted gross income tax.

#### **S Corporation**

A corporation is exempt from the corporate adjusted gross income tax if it is a corporation which is exempt from the federal income tax under Section 1363 of the Internal Revenue Code (IRC). However, the income of an S corporation that is subject to income tax under the IRC, such as excess net passive income, capital gains and built-in capital gains, will be subject to the Indiana corporate adjusted gross income tax.

The S corporation must comply with the requirements of IC 6-3-4-13 by withholding the amounts prescribed by the Department at the time it pays or credits amounts to a nonresident shareholder as dividends or as a share of the corporation's undistributed taxable income. Failure to withhold and pay the amount required will subject the corporation to a 20 percent penalty of the tax required under IC 6-3-4-13 and IC 6-8.1-10-2.1(h).

A qualified S corporation is required to file an annual information return on Form IT-20S. The return is due on the 15<sup>th</sup> day of the 4<sup>th</sup> month following the close of its taxable year.

An S corporation shall file a composite adjusted gross income tax return on behalf of all of its shareholders who are not residents of Indiana. The nonresident shareholders participating in the composite return will be relieved of the obligation to file an individual adjusted gross income tax return.

### **Nonprofit Organization**

A nonprofit organization is subject to the adjusted gross income tax, unless the income is specifically exempted from taxation under the provisions of IC 6-3-2-2.8 and 6-3-2-3.1. A nonprofit organization will be subject to tax on income derived from an unrelated trade or business as defined in Section 513 of the IRC. A political organization and a homeowners organization are not considered nonprofit organizations and therefore must file as regular corporations on Form IT-20.

### **Insurance Company**

A foreign insurance company (one organized under the laws of a state other than Indiana) is required by IC 27-1-18-2 to pay the insurance premium tax to the Indiana Department of Insurance. Paying the premium tax exempts a foreign corporation from the adjusted gross income tax. A domestic insurance company is exempt from the adjusted gross income tax if it elects to pay the premium tax.

### **Financial Institutions**

Financial institutions are subject to a franchise tax under IC 6-5.5. The franchise tax extends to both resident and non-resident financial institutions and to all other corporate entities when 80 percent of gross income is derived from activities which encompass the business of a financial institution. The business of a financial institution is defined as activities authorized by the Federal Reserve Board; the making, acquiring, selling, or servicing loans or extensions of credit; or operating a credit, debit card or charge card business. Entities subject to this tax must file Form FIT-20. (For more information, see Commissioner's Directive #14.)

## **Utility Receipts Tax**

The utility receipts tax is an income tax imposed on the gross receipts from the retail sale of utility services. The tax rate is 1.4 percent. Utility services include electrical energy, natural gas, water, steam, sewage, and telecommunication services. (For further information concerning the utility receipts tax, see Commissioner's Directive #18.)

## **Corporate Adjusted Gross Income Tax**

The adjusted gross income tax rate is 8.5 percent.

The tax base is computed by using net federal taxable income from the federal Form 1120 and adding back all state income taxes (all taxes based on income), and charitable contributions that were deducted on the federal return.

The nonbusiness income of a corporation is specifically allocated under IC 6-3-2-2(g) through (k). Nonbusiness income is only that income that is not considered business income. Business income is all income which arises from the conduct of trade or business operations of the taxpayer. For further information concerning the classification of business and nonbusiness income, refer to the annual return, its filing instructions, and the Department's regulations.

If a corporation has business income from both within and without Indiana, the corporation, other than a domestic insurance company, must apportion its income by means of the three-factor formula under IC 6-3-2-2.

For Indiana adjusted gross income tax purposes, the term "doing business" generally means the operation of any business enterprise or activity in Indiana including but not limited to the following:

1. Maintenance of an office, warehouse, construction site or other place of business in Indiana.
2. Maintenance of an inventory of merchandise or material for sale, distribution, or manufacture.
3. The sale or distribution of merchandise to customers in Indiana directly from company owned or operated vehicles when the title of merchandise is transferred from the seller or distributor to the customer at the time of sale or distribution.
4. The rendering of a service to customers in Indiana.

5. The ownership, rental, or operation of business or property (real or personal) in Indiana.
6. Acceptance of orders in Indiana with no right of approval or rejection in another state.
7. Interstate transportation.
8. Maintenance of a public utility.

The apportionment factor to be applied to a corporation's business income to determine the amount taxable by Indiana is based on a three factor formula of property, payroll and sales. For taxable years beginning after December 31, 2006, and before January 1, 2008, the numerator of the fraction is the sum of the property factor, plus the payroll factor, plus the product of the sales factor multiplied by 3, and the denominator of the fraction is 5. For taxable years beginning after December 31, 2007, and before January 1, 2009, the numerator of the fraction is the sum of the property factor, the payroll factor and the sales factor multiplied by 4.67, and the denominator of the fraction is 6.67. For taxable years beginning after December 31, 2008, and before January 1, 2010, the numerator of the fraction is the sum of the property, factor, the payroll factor and the sales factor multiplied by 8, and the denominator of the fraction is 10. For taxable years beginning after December 31, 2009 and before January 1, 2011, the numerator of the fraction is the property factor, the payroll factor and the sales factor multiplied by 18, and the denominator of the fraction is 20. For all taxable years beginning after December 31, 2010, Indiana's apportioned income will be determined by using only the sales factor.

The property factor is determined by dividing the total value of the taxpayer's Indiana property by the total value of the taxpayer's property everywhere. The payroll factor is determined by dividing the total compensation paid by the taxpayer within Indiana by the total compensation paid everywhere by the taxpayer. The sales factor is determined by dividing the taxpayer's total Indiana sales by the taxpayer's total sales everywhere. The numerator of the sales factor includes all sales made in Indiana, sales made from Indiana to the U.S. Government, and sales made from Indiana to a state which does not have jurisdiction to tax the activities of the seller. Destination sales by an Indiana seller which has activities in the state of destination, other than mere solicitation, will not be included in the numerator of the sales factor regardless of whether or not the destination state levies a tax. For more information on the determination of Indiana source income, see IC 6-3-2-2. As used in this paragraph, the term "everywhere" does not include property, payroll, or sales of a foreign corporation in a place that is outside the United States.

## **Filing Requirements**

Annual tax returns are required under the Adjusted Gross Income Tax Act (Form IT-20). The due date for the IT-20 return is the 15<sup>th</sup> day of the 4<sup>th</sup> month following the close of the taxable year.

The Department accepts the federal extension of time applications (Form 7004) and it is not necessary to contact the Department prior to filing the annual return. A copy of the federal extension of time must be attached to the return when it is filed. When a corporation does not need a federal extension of time and one is necessary for filing the state return, a letter requesting such an extension should be submitted to the Department prior to the due date of the annual return.

An extension of time granted under IC 6-8.1-6-1 waives the late payment penalty for the extension period on the balance of tax due provided 90 percent of the current year's total tax liability is paid on or prior to the original due date. Interest on the balance of tax due must be included with the return when it is filed. Interest is computed from the original due date until the date of payment. In October of each year the Department establishes the interest rate for the next calendar year. See Departmental Notice #3 and #22 for interest rates.

## **Separate Accounting**

Indiana does not accept returns filed on a separate accounting basis without prior approval. If the apportionment provisions do not fairly reflect the corporation's Indiana income, the corporation must petition the department for permission to use an alternative method.

## **Consolidated Reporting**

The Adjusted Gross Income Tax Act provides for an election to file a consolidated return for a qualified affiliated group under IC 6-3-4-14. To file a consolidated return for adjusted gross income tax purposes, the parent corporation must own at least 80 percent of the voting stock of each subsidiary. Each corporation in the affiliated group electing to file consolidated must be either incorporated in Indiana, or be registered with the Secretary of State to do business in Indiana. The affiliated group may not include any corporation which does not have taxable income or loss derived from Indiana sources. If such an election is made for Indiana tax purposes, the Department should be notified by attaching a statement to the return which indicates those affiliated corporations electing to file a consolidated return. In addition, a worksheet must accompany the annual return supporting the consolidated adjusted gross income of the participating affiliates.

An election to file a consolidated return for Indiana purposes can be made by filing the consolidated return by the due date; if filed past the due date, a copy of the valid federal extension of time to file must be attached to the return. An election to file a consolidated return cannot be made on a retroactive basis. Once an affiliated group elects to file consolidated for Indiana purposes, the group must follow that election for all subsequent years of filing. If the group wishes to revoke the election in a subsequent tax year, the group must obtain written permission from the Department at least 90 days prior to the due date of the return.

### **Combined Reporting**

A taxpayer may petition the Department for permission to file a combined income tax return for a tax year. However, the petition must be filed with the Department on or before 30 days after the end of the tax year for which permission is sought. The petition should be sent to the Tax Policy Division, 100 North Senate, N-280, Indianapolis, IN 46204. A timely filed petition will be granted if combined reporting will more fairly reflect the unitary group's Indiana source income. However, combined reporting is limited to the "water's-edge" of the United States.

A unitary group that has petitioned and received permission from the Department to file a combined return in Indiana may file one return for the unitary group, providing a schedule is attached showing the adjusted gross income tax due by member. In the alternative, the unitary group should file an Indiana return for each member doing business in Indiana. The taxpayer filing the combined return must petition the Department within 30 days after the end of the tax year for permission to discontinue the filing of a combined return.

### **Accounting Period**

The accounting period for the adjusted gross income tax must be the same as the accounting period adopted for federal income tax purposes.

### **Accounting Methods**

The Department requires use of the method of accounting used for federal income tax purposes.

### **Estimated Tax Requirements**

A corporation whose estimated adjusted gross income tax liability exceeds \$2,500 for a taxable year, must file quarterly estimated tax payments. The quarterly estimated tax payments are submitted with an appropriate Indiana voucher or by electronic funds transfer, depending on the amount of the payment due. The quarterly estimated payment must be equal to the lesser of 25% of the

adjusted gross income tax liability for the taxable year, or the annualized income installment calculated by Section 6655(e) of the Internal Revenue Code as applied to the corporation's liability for adjusted gross income tax.

### **Underpayment of Estimated Tax Penalties**

To avoid the underpayment of estimated tax penalties, corporations are required to make quarterly payments equal to 20% of the final tax liability for the current year, or 25% of the corporation's liability for the previous tax year. The penalty on corporate adjusted gross income tax or utility receipts tax is assessed on the difference between the actual amount paid by the corporation for each quarter and 25% of the corporation's final adjusted gross income tax liability for the current year. For estimated payment dates see Information Bulletin #11.

### **Tax Credits**

See Information Bulletin #59 for a complete list of available credits,

### **Summary**

A corporation operating in Indiana which is not certain of its tax status should promptly apply to the Department for a determination of its status. Complete detailed information as to the corporation's operation should be submitted. All correspondence concerning the matter should be addressed to the Indiana Department of Revenue, Tax Administration Division, 100 North Senate Avenue, Room N203, Indiana Government Center North, Indianapolis, Indiana 46204-2253.

A corporation should ask for a determination of its tax status before commencing business in Indiana to avoid the possibility of costly penalties and interest charges for the delinquent filing of returns.

A handwritten signature in black ink that reads "John Eckart". The signature is fluid and cursive, with a large loop at the beginning of the "J" and a stylized "Eckart".

John Eckart  
Commissioner